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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 475

FRANK R. FRANKO,
Petitioner,

vs.

MAHONING COUNTY BAR ASSOCIATION,
Respondent.

BRIEF OF RESPONDENT
In Opposition to Petition for Writ of Certiorari to the Supreme Court of Ohio

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Opposing counsel have accurately and ably stated all of the facts essential to a fair consideration of his case and we, therefore, proceed directly to a discussion of the law.

PETITIONER WAS ACCORDED DUE PROCESS OF LAW IN EVERY RESPECT.

Petitioner concedes that it was not essential that the Supreme Court of Ohio actually conduct the trial of his case and that it was perfectly proper for it to assign this task to a Panel of three of its seventeen member Board of Commissioners on Grievances and Discipline. His only complaint is that the findings and recommendations of the three member Panel which were reviewed and acted upon by the entire Board were not made available either to him or to the Supreme Court of Ohio. We submit that his contention is utterly without merit.

There is no question but that the report of the Panel was considered by the full seventeen member Board. Indeed, the Panel itself was a part and parcel of that Board and the impressions which its members obtained in conducting the trial and listening to the witnesses were most certainly fully discussed during the Board's deliberations. And it had before it the transcript of all of the testimony as well.

The Petitioner further concedes that due process does not require that a court see and hear the witnesses and that many cases are tried wholly on depositions or on a transcript of the testimony taken at a former trial. The cases of *Crow v. Industrial Commission*, 104 Utah 333, 140 Pac. 2nd 321 (1943) and *Radaca v. United States Smelting Company*, 62 Arizona 464, 158 Pac. 2nd 540 (1945) upon which he relies simply hold that those who are required to find the ultimate facts should have the benefit of the impressions gained by those who saw and heard the witnesses. And this is exactly what happened in Petitioner's case. Certainly due process does not require that the Supreme Court of Ohio should have been the finders of the ultimate facts. The Interstate Commerce Commission and many other federal commissions and innumerable commissions of the various states are constantly conducting hearings and making ultimate findings of facts and their right to do so has been established beyond question.

Moreover, there was little or no conflict in the evidence as to Petitioner's misconduct. He concededly did not resign his judicial position while campaigning for the office of Prosecuting Attorney of Mahoning County, Ohio; he concededly did not note the pleas of guilt on drivers' licenses as he was required to do by statute; he never, at any time, denied the fact that during his campaign for Prosecuting Attorney he voided over seven hundred park-

ing violation tickets; he admitted that he had voided ten such tickets of his own and, he, himself, testified that in a traffic violation case (the George Chappel case) he issued a subpoena for a police officer whom he knew to be in Florida and whose presence could not possibly have been obtained by such subpoena. Thus, the finders of the facts were not even required to resolve any conflicting testimony.

We submit, therefore, that the Petitioner's misconduct was clearly established by his own testimony and we further submit that even though it might be said that the evidence of his misconduct was in conflict, he was nevertheless afforded the full protection guaranteed to him by the due process of law clause of the Federal Constitution. The seventeen member Board of Commissioners, in their deliberations, had the full benefit of listening to the comments and views of the three members of their Board who had conducted the trial and who had heard the witnesses. And the Supreme Court of Ohio, in reviewing and affirming the Board's recommendation, had before it a transcript of all the testimony. Surely, such a procedure afforded to Petitioner every constitutional protection contemplated by the Fourteenth Amendment.

Respectfully submitted,

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